

1 THOMAS E. FRANKOVICH (State Bar No. 074414)
 2 THOMAS E. FRANKOVICH,
 3 *A Professional Law Corporation*
 4 2806 Van Ness Avenue
 5 San Francisco, CA 94109
 6 Telephone: 415/674-8600
 7 Facsimile: 415/674-9900

8 Attorneys for Plaintiffs MARSHALL LOSKOT
 9 and DISABILITY RIGHTS ENFORCEMENT,
 10 EDUCATION SERVICES:HELPING YOU
 11 HELP OTHERS

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 MARSHALL LOSKOT, an individual; and)
 15 DISABILITY RIGHTS ENFORCE-MENT,)
 16 EDUCATION SERVICES: HELPING YOU)
 17 HELP OTHERS, a California public benefit)
 18 corporation,

19 Plaintiffs,

20 v.

21 POLK STREET ECONO LODGE;
 22 TARUNKUMAR K. PATEL and
 23 CHAMPABEN PATEL, dba Econo Lodge,

24 Defendants.

25 **CASE NO. C-02-4537 CW**
Civil Rights

26 **COMPLAINT FOR INJUNCTIVE RELIEF**
AND DAMAGES:

27 **1st CAUSE OF ACTION:** For Denial of
 28 Access by a Public Accommodation in
 29 Violation of the Americans with Disabilities Act
 30 of 1990 (42 U.S.C. §12101, *et seq.*)

31 **2nd CAUSE OF ACTION:** For Denial of Full
 32 and Equal Access in Violation of California
 33 Civil Code §§54, 54.1 and 54.3

34 **3rd CAUSE OF ACTION:** For Denial of
 35 Accessible Sanitary Facilities in Violation of
 36 California Health & Safety Code §19955, *et seq.*

37 **4th CAUSE OF ACTION:** For Denial of
 38 Access to Full and Equal Accommodations,
 39 Advantages, Facilities, Privileges and/or
 40 Services in Violation of California Civil Code
 41 §51, *et seq.* (The Unruh Civil Rights Act)

42 **5th CAUSE OF ACTION:** For Unfair Business
 43 Practices in Violation of California Business
 44 and Professions Code §17200, *et seq.*

45 **DEMAND FOR JURY**

46 Plaintiffs MARSHALL LOSKOT, an individual; and DISABILITY RIGHTS
 47 ENFORCEMENT, EDUCATION SERVICES: HELPING YOU HELP OTHERS, a California
 48 public benefit corporation (hereinafter sometimes referred to as "DREES"), complain of

1 defendants TARUNKUMAR K. PATEL and CHAMPABEN PATEL, dba Econo Lodge and
 2 allege as follows:

3 **INTRODUCTION:**

4 1. This is a civil rights action for discrimination against persons with physical
 5 disabilities, of which class plaintiffs MARSHALL LOSKOT and the membership of DREES are
 6 members, for failure to remove architectural barriers structural in nature at defendants' POLK
 7 STREET ECONO LODGE, a place of public accommodation, thereby discriminatorily denying
 8 plaintiffs and the class of other similarly situated persons with physical disabilities access to, the
 9 full and equal enjoyment of, opportunity to participate in, and benefit from, the goods, facilities,
 10 services, and accommodations thereof. Plaintiffs seek injunctive relief and damages pursuant to
 11 the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code
 12 §§51, 51.5 and 54, *et seq.*; California Health & Safety Code §19955, *et seq.* and California
 13 Business and Professions Code §17200, *et seq.*

14 2. Plaintiff MARSHALL LOSKOT is a person with physical disabilities who, on or
 15 about March 12, 2002, was an invitee, guest, patron, customer at defendants' POLK STREET
 16 ECONO LODGE, in the City of San Francisco, California. At said time and place, defendants
 17 failed to provide proper legal access to the POLK STREET ECONO LODGE, "which is a public
 18 accommodation" and/or a "public facility" including, but not limited to the parking, lobby and
 19 guest rooms. The denial of access was in violation of both federal and California legal
 20 requirements, and plaintiff MARSHALL LOSKOT suffered violation of his civil rights to full
 21 and equal access, and was embarrassed and humiliated.

22 **JURISDICTION AND VENUE:**

23 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
 24 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*
 25 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same
 26 nucleus of operative facts and arising out of the same transactions, are also brought under
 27 parallel California law, whose goals are closely tied with the ADA, including but not limited to
 28 violations of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code

1 §19955 *et seq.*, including §19959; Title 24, California Building Standards Code; and California
 2 Business and Professions Code §17200, *et seq.*

3 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is
 4 founded on the facts that the real property which is the subject of this action is located in this
 5 district at/near 825 Polk Street, in the City and County of San Francisco, State of California and
 6 that plaintiffs' causes of action arose in this district.

7 **PARTIES:**

8 5. Plaintiff MARSHALL LOSKOT is a "physically handicapped person," a
 9 "physically disabled person," and a "person with physical disabilities." (Hereinafter the terms
 10 "physically disabled," "physically handicapped" and "person with physical disabilities" are used
 11 interchangeably, as these words have similar or identical common usage and legal meaning, but
 12 the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically
 13 handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54, 54.1 and 55, and other
 14 statutory measures refer to protection of the rights of "physically disabled persons." Plaintiff
 15 MARSHALL LOSKOT is a "person with physical disabilities," as defined by all applicable
 16 California and United States laws. Plaintiff MARSHALL LOSKOT is a paraplegic. Plaintiff
 17 MARSHALL LOSKOT requires the use of a wheelchair to travel about in public. Consequently,
 18 plaintiff MARSHALL LOSKOT is a member of that portion of the public whose rights are
 19 protected by the provisions of Health & Safety Code §19955, *et seq.* (entitled "Access to Public
 20 Accommodations by Physically Handicapped Persons") and the protections of the Unruh Civil
 21 Rights Act, Civil Code §§51, 51.5 and 54, *et seq.* and California Business and Professions Code
 22 §17200, *et seq.*

23 6. Plaintiff DISABILITY RIGHTS ENFORCEMENT, EDUCATION SERVICES:
 24 HELPING YOU HELP OTHERS ("DREES") is a nonprofit (501(c)(3)) organization that works
 25 with persons with disabilities to empower them to be independent in American society. DREES
 26 accomplishes its goals and purposes through education on disability issues, enforcement of the
 27 rights of persons with disabilities, and the provision of services to persons with disabilities, the
 28 general public, public agencies and the private business sector.

1 7. Defendants TARUNKUMAR K. PATEL and CHAMPABEN PATEL, dba Econo
 2 Lodge (hereinafter alternatively collectively referred to as "defendants") are the owners and
 3 operators, lessors and/or lessees, or agents of the owners, lessors and/or lessees, and/or alter
 4 egos, franchisors and/or franchisees, of the building and/or buildings which constitute a public
 5 facility in and of itself, occupied by the POLK STREET ECONO LODGE, a public
 6 accommodation, located at/near 825 Polk Street, San Francisco, California, and subject to the
 7 requirements of California state law requiring full and equal access to public facilities pursuant
 8 to §§19955ff Health & Safety Code, and §§51, 51.5, 52(a), 54.1 and 54.3 Civil Code, and subject
 9 to Title III of the Americans with Disabilities Act of 1990, and to all other legal requirements
 10 referred to in this complaint.

11 8. At all times relevant to this complaint, defendants TARUNKUMAR K. PATEL
 12 and CHAMPABEN PATEL, dba Econo Lodge, are the lessees, or agents of the lessees, and/or
 13 lessors, of said premises, and/or alter egos of the lessees, lessors and their agents, and own and
 14 operate in joint enterprise the subject POLK STREET ECONO LODGE as a public facility
 15 at/near 825 Polk Street, San Francisco, California. This business is open to the general public
 16 and conducts business therein. The business operating on said premises is a "public
 17 accommodation" or "public facility" subject to the requirements of California Civil Code §54, *et*
 18 *seq.* Plaintiffs do not know the relative responsibilities of each of the defendants in the operation
 19 of the facilities herein complained of, and allege a joint venture and common enterprise by all
 20 such defendants.

21 9. At all times relevant to this complaint, defendants TARUNKUMAR K. PATEL
 22 and CHAMPABEN PATEL, dba Econo Lodge are the landlord(s)/lessor(s), tenant(s)/lessee(s)
 23 and the owners and operators of the subject POLK STREET ECONO LODGE, a public facility
 24 located at/near 825 Polk Street, San Francisco, California. As such, these defendants are jointly
 25 and severally responsible to identify and remove architectural barriers pursuant to Code of
 26 Federal Regulations section 36.201(b), which states in pertinent part:

27 **§ 36.201 General**

28 (b) *Landlord and tenant responsibilities.* Both the landlord
 who owns the building that houses a place of public

1 accommodation and the tenant who owns or operates the place of
 2 public accommodation are public accommodations subject to the
 3 requirements of this part. As between the parties, allocation of
 4 responsibility for complying with the obligations of this part may
 5 be determined by lease or other contract.

6 CFR §36.201(b)

7 10. Plaintiffs do not know the true names of defendants TARUNKUMAR K. PATEL
 8 and CHAMPABEN PATEL, dba Econo Lodge, their business capacities, their ownership
 9 connection to the property and business, nor their relative responsibilities in causing the access
 10 violations herein complained of, and allege a joint venture and common enterprise by all such
 11 defendants. Plaintiffs are informed and believe that each of the defendants herein is a public
 12 accommodation, and is the agent, ostensible agent, master, servant, employer, employee,
 13 representative, franchisor, franchisee, joint venturer, alter ego, partner, and associate, or such
 14 similar capacity, of each of the other defendants, and was at all times acting and performing, or
 15 failing to act or perform, within the course and scope of his, her or its authority as agent,
 16 ostensible agent, master, servant, employer, employee, representative, franchiser, franchisee,
 17 joint venturer, alter ego, partner, and associate, or such similar capacity, and with the
 18 authorization, consent, permission or ratification of each of the other defendants, and is
 19 responsible in some manner for the acts and omissions of the other defendants in legally causing
 20 the violations and damages complained of herein, and have approved or ratified each of the acts
 21 or omissions of each other defendant, as herein described. Plaintiffs will seek leave to amend
 22 when the true names, capacities, connections, and responsibilities of defendants
 23 TARUNKUMAR K. PATEL and CHAMPABEN PATEL, dba Econo Lodge are ascertained.

24 11. Plaintiffs are informed and believe that all named defendants conspired to commit
 25 the acts described herein, or alternatively, aided and abetted one another in the performance of
 26 the wrongful acts hereinafter alleged.

27 **PRELIMINARY FACTUAL ALLEGATIONS:**

28 12. Defendants TARUNKUMAR K. PATEL and CHAMPABEN PATEL, dba Econo
 29 Lodge are the private persons and/or entities that are public accommodations that own, lease (or
 30 lease to), or operate the POLK STREET ECONO LODGE, a hotel/motel, located at/near 825

1 Polk Street, San Francisco, California. The POLK STREET ECONO LODGE, its parking,
 2 lobby, guest rooms and its other facilities are each a “place of public accommodation or facility”
 3 subject to the requirements of the Americans with Disabilities Act and California Health &
 4 Safety Code §19955, *et seq.* On information and belief, each such facility has, since July 1, 1970,
 5 undergone “alterations, structural repairs and additions,” each of which has subjected the POLK
 6 STREET ECONO LODGE and each of its facilities, its parking, lobby and guest rooms to
 7 handicapped access requirements per the Americans with Disabilities Act Accessibility
 8 Guidelines for Buildings & Facilities (ADAAG), Civil Code §54.1, and §19959, Health & Safety
 9 Code.

10 13. Plaintiff MARSHALL LOSKOT is a person with a disability. Plaintiff
 11 MARSHALL LOSKOT is a “person with physical disabilities,” as defined by all applicable
 12 California and United States laws. Plaintiff MARSHALL LOSKOT is a paraplegic. Plaintiff
 13 MARSHALL LOSKOT requires the use of a wheelchair for mobility and to travel in public.

14 14. Plaintiff DISABILITY RIGHTS ENFORCEMENT, EDUCATION SERVICES:
 15 HELPING YOU HELP OTHERS (“DREES”) is a nonprofit (501(c)(3)) organization, the
 16 purposes of which are promoting, providing and advocating disability rights, education,
 17 independent living, enforcement and services which help provide assistance to persons with
 18 disabilities and persons and entities who in turn will help others who have disabilities.

19 15. That members of DREES, like plaintiff MARSHALL LOSKOT, will or have
 20 been guests and invitees at the subject POLK STREET ECONO LODGE, and that the interests
 21 of plaintiff DREES in removing architectural barriers at the subject motel advance the purposes
 22 of DREES to assure that all public accommodations, including the subject motel, are accessible
 23 to independent use by mobility-impaired persons. The relief sought by plaintiff DREES as
 24 alleged herein is purely statutory in nature.

25 16. At all times stated herein, plaintiff MARSHALL LOSKOT was a member of
 26 DREES.

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1 17. At all times referred to herein and continuing to the present time, defendants, and
2 each of them, advertised, publicized and held out the POLK STREET ECONO LODGE as being
3 handicapped accessible and handicapped usable.

4 18. On or about March 12, 2002, plaintiff MARSHALL LOSKOT was an invitee and
5 guest at the subject POLK STREET ECONO LODGE, with his attendant Chelsea Brown, for
6 purposes of purchasing a handicapped accessible room for an overnight stay.

7 19. On or about March 12, 2002, plaintiff MARSHALL LOSKOT was in San
8 Francisco to promote his garlic and spice products. Plaintiff MARSHALL LOSKOT had a
9 discount coupon for the subject POLK STREET ECONO LODGE.

10 20. On or about March 12, 2002, plaintiff MARSHALL LOSKOT, upon pulling into
11 the parking lot of the POLK STREET ECONO LODGE, discovered that there was inadequate
12 handicapped parking and was compelled to park diagonally across two parking stalls in order to
13 lower his lift and not have his lift blocked.

14 21. At said time and place, plaintiff MARSHALL LOSKOT entered the lobby and
15 discovered that the registration counter was too high. Plaintiff MARSHALL LOSKOT asked for
16 an accessible room. He was told that the POLK STREET ECONO LODGE did not have one. It
17 was late, 5:30 p.m. Plaintiff MARSHALL LOSKOT was tired and felt that he might not find
18 another room. Therefore, plaintiff MARSHALL LOSKOT asked for, and was sold, the largest
19 room available at the subject motel.

20 22. At said time and place, plaintiff MARSHALL LOSKOT went to his room but
21 could not gain access due to a 4-inch high threshold. Plaintiff MARSHALL LOSKOT, even
22 with the help of Chelsea Brown, stressed and strained himself, injuring his shoulder, in gaining
23 entry.

24 23. At said time and place, plaintiff MARSHALL LOSKOT needed to use the
25 bathroom, but was unable to do so as the door was too narrow.

26 24. At said time and place, plaintiff MARSHALL LOSKOT needed to use the toilet
27 and was compelled to use the restroom at Chiopino's Restaurant.

1 . 25. On or about March 13, 2002, the next day, plaintiff MARSHALL LOSKOT had
 2 to catheterize in the waste paper basket and direct his attendant to pour it into the toilet, a
 3 humiliating experience.

4 26. Therefore, at said time and place, plaintiff MARSHALL LOSKOT, a person with
 5 a disability, encountered the following inaccessible elements of the subject POLK STREET
 6 ECONO LODGE which constituted architectural barriers and a denial of the proper and legally-
 7 required access to a public accommodation to persons with physical disabilities including, but
 8 not limited to:

- 9 a. lack of handicapped accessible parking signage;
- 10 b. lack of the requisite number of accessible guest rooms by class of rooms;
- 11 c. lack of the requisite number of regular disabled parking stall(s);
- 12 d. lack of disabled van accessible parking stall(s);
- 13 e. lack of an accessible entrance to the guest rooms;
- 14 f. lack of handicapped accessible registration counter;
- 15 g. lack of handicapped accessible guest room and bathroom within;
- 16 h. lack of a reservation policy, practice and procedure to "hold" disabled
 guest rooms for persons with disabilities before selling said rooms to the
 general public;
- 17 i. On personal knowledge, information and belief, other public facilities and
 elements too numerous to list were improperly inaccessible for use by
 persons with physical disabilities.

20 27. At all times stated herein, the existence of architectural barriers at defendants'
 21 place of public accommodation evidenced "actual notice" of defendants' intent not to comply
 22 with the Americans with Disabilities Act of 1990 either then, now or in the future.

23 28. As a legal result of defendants TARUNKUMAR K. PATEL and CHAMPABEN
 24 PATEL, dba Econo Lodge's failure to act as a reasonable and prudent public accommodation in
 25 identifying, removing or creating architectural barriers, policies, practices and procedures that
 26 denied access to plaintiffs and other persons with disabilities, plaintiffs suffered the damages as
 27 alleged herein.

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1 29. As a legal result of defendants' actions or omissions as stated herein and
2 defendants' denial of access to plaintiff to all or part of the facilities constituting the public
3 accommodations which comprise the POLK STREET ECONO LODGE, plaintiff was
4 wrongfully evicted and/or rejected by defendants, and each of them.

5 30. As a further legal result of the actions and failure to act of defendants, and as a
6 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
7 herein, plaintiffs were denied their civil rights to full and equal access to public facilities.
8 Plaintiff MARSHALL LOSKOT suffered a loss of his civil rights and his rights as a person with
9 physical disabilities to full and equal access to public facilities, and further suffered bodily injury
10 (including, but not limited to, fatigue, stress, strain and pain in wheeling and attempting to gain
11 entry to the guest room and from the forced digital evacuation and catheterization), physical
12 discomfort, emotional distress, mental distress, mental suffering, mental anguish, which
13 includes, but is not limited to, shame, humiliation, embarrassment, anger, chagrin,
14 disappointment and worry, expectedly and naturally associated with a person with physical
15 disabilities being denied access, all to his damages as prayed hereinafter in an amount within the
16 jurisdiction of this court.

17 31. Defendants', and each of their, failure to remove the architectural barriers
18 complained of herein created, at the time of plaintiff MARSHALL LOSKOT's first visit to said
19 public accommodation, and continues to create continuous and repeated exposure to
20 substantially the same general harmful conditions which caused plaintiff MARSHALL LOSKOT
21 fatigue, stress, strain and pain in futilely attempting to overcome the architectural barriers as
22 stated herein.

23 32. Plaintiff MARSHALL LOSKOT is "physically handicapped," "physically
24 disabled," or a "person with physical disabilities" who was denied his rights to equal access to a
25 public facility by defendants TARUNKUMAR K. PATEL and CHAMPABEN PATEL, dba
26 Econo Lodge because said defendants maintained a public hotel without access for persons with
27 physical disabilities to its facilities, including but not limited to the parking, registration counter,
28 guest rooms and other public areas as stated herein], and continue to the date of filing this

1 complaint to deny equal access to plaintiffs and other persons with physical disabilities in these
 2 and other ways.

3 33. Plaintiff DREES, whose members and the disability community that DREES
 4 serves are “physically handicapped,” “physically disabled,” or “persons with physical
 5 disabilities” and were, are and will be denied their rights to equal access to a public facility by
 6 defendants TARUNKUMAR K. PATEL and CHAMPABEN PATEL, dba Econo Lodge because
 7 said defendants maintained a public hotel without access for persons with physical disabilities to
 8 its facilities, including but not limited to the parking registration counter, guest rooms and other
 9 public areas as stated herein], and continue to the date of filing this complaint to deny equal
 10 access to plaintiff and other persons with physical disabilities in these and other ways.

11 34. On information and belief, construction alterations carried out by defendants have
 12 also triggered access requirements under both California law and the Americans with Disabilities
 13 Act of 1990.

14 35. Plaintiffs, as described hereinbelow, seek injunctive relief to require the POLK
 15 STREET ECONO LODGE to be made accessible to meet the requirements of both California
 16 law and the Americans with Disabilities Act of 1990, whichever is more restrictive, so long as
 17 defendants operate the subject motel as a public facility. Plaintiffs seek damages for violation of
 18 their civil rights, from March 12, 2002 until such date as defendants bring the POLK STREET
 19 ECONO LODGE into compliance with the requirements of California and federal law. To
 20 encourage defendants to bring the subject motel into compliance with the law, plaintiffs also
 21 seek daily damages of not less than \$1,000/day, pursuant to §§52(a) and 54.3, California Civil
 22 Code, for each day after his visit until such time as the motel is made fully accessible to
 23 plaintiffs and to other persons with physical disabilities.

24 36. On information and belief, defendants have been negligent in their affirmative
 25 duty to identify the architectural barriers complained of herein and negligent in the removal of
 26 some or all of said barriers.

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1 37. Because of defendants' violations, plaintiffs and other persons with physical
2 disabilities are unable to use public facilities such as those owned and operated by defendants on
3 a "full and equal" basis unless such facility is in compliance with the provisions of the
4 Americans with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et*
5 *seq.* and other accessibility law as plead herein. Plaintiffs seek an order from this court
6 compelling defendants to make the POLK STREET ECONO LODGE accessible to persons with
7 disabilities.

8 38. On information and belief, defendants have intentionally undertaken to modify
9 and alter existing building(s), and have failed to make them comply with accessibility
10 requirements under the requirements of ADAAG and Title 24. The acts and omission of
11 defendants, and each of them, in failing to provide the required accessible public facilities at
12 the time of plaintiff's visit and injuries, indicate actual and implied malice toward plaintiffs, and
13 despicable conduct carried out by defendants, and each of them, with a willful and conscious
14 disregard for the rights and safety of plaintiffs and other similarly situated persons, and justify
15 exemplary damages pursuant to §3294 of the Civil Code, in amounts sufficient to make a more
16 profound example of defendants, and each of them, to other operators of other hotels, motels
17 and other public facilities, and to punish defendants and to carry out the purposes of §3294 of the
18 Civil Code.

19 39. Plaintiffs are informed and believe and therefore allege that defendants
20 TARUNKUMAR K. PATEL and CHAMPABEN PATEL, dba Econo Lodge, and each of them,
21 caused the subject building(s) which constitute the POLK STREET ECONO LODGE to be
22 constructed, altered and maintained in such a manner that persons with physical disabilities were
23 denied full and equal access to, within and throughout said building(s) of the subject motel and
24 were denied full and equal use of said public facilities. Further, on information and belief,
25 defendants have continued to maintain and operate said motel and/or its building(s) in such
26 conditions up to the present time, despite actual and constructive notice to such defendants that
27 the configuration of the POLK STREET ECONO LODGE and/or its building(s) is in violation
28 of the civil rights of persons with physical disabilities, such as plaintiff MARSHALL LOSKOT,

1 the membership of plaintiff DREES and the disability community which DREES serves. Such
2 construction, modification, ownership, operation, maintenance and practices of such public
3 facilities are in violation of law as stated in Part 5.5, Health & Safety Code §19955-19959, *et*
4 *seq.* and elsewhere in the laws of California.

5 40. On information and belief, the subject public facilities and building(s) of the
6 POLK STREET ECONO LODGE denied full and equal access to plaintiffs and other persons
7 with physical disabilities in other respects due to noncompliance with requirements of Title 24 of
8 California Building Standards Code and Health & Safety Code §19955, *et seq.*

9 41. On personal knowledge, information and belief, the basis of defendants' actual
10 and constructive notice that the physical configuration of the facilities including, but not limited
11 to, architectural barriers constituting the POLK STREET ECONO LODGE and/or building(s)
12 was in violation of the civil rights of persons with physical disabilities, such as plaintiffs,
13 includes, but is not limited to, communications with invitees and guests, owners of other
14 restaurants, hotels, motels and businesses, notices they obtained from governmental agencies
15 upon modification, improvement, or substantial repair of the subject premises and other
16 properties owned by these defendants, newspaper articles and trade publications regarding the
17 Americans with Disabilities Act of 1990 and other access laws, public service announcements by
18 former U.S. Attorney General Janet Reno between 1993 and 2000, and other similar information.
19 Defendants' failure, under state and federal law, to make the POLK STREET ECONO LODGE
20 accessible is further evidence of defendants' conscious disregard for the rights of plaintiff and
21 other similarly situated persons with disabilities. The scope and means of the knowledge of each
22 defendant is within each defendant's exclusive control and cannot be ascertained except through
23 discovery. Despite being informed of such effect on plaintiff and other persons with physical
24 disabilities due to the lack of accessible facilities, defendants, and each of them, knowingly and
25 willfully refused to take any steps to rectify the situation and to provide full and equal access for
26 plaintiffs and other persons with physical disabilities to the POLK STREET ECONO LODGE.
27 Said defendants, and each of them, have continued such practices, in conscious disregard for the
28 rights of plaintiffs and other persons with physical disabilities, up to the date of filing of this

1 complaint, and continuing thereon. Defendants had further actual knowledge of the architectural
 2 barriers referred to herein by virtue of the demand letter addressed to the defendants and served
 3 concurrently with the summons and complaint. Said conduct, with knowledge of the effect it
 4 was and is having on plaintiffs and other persons with physical disabilities, constitutes
 5 despicable conduct in conscious disregard of the rights and safety of plaintiffs and of other
 6 similarly situated persons, justifying the imposition of punitive and exemplary damages per Civil
 7 Code §3294.

8 42. Punitive Damages -- Defendants, and each of them, at times prior to and including
 9 March 13, 2002, and continuing to the present time, knew that persons with physical disabilities
 10 were denied their rights of equal access to all portions of this public facility. Despite such
 11 knowledge, defendants, and each of them, failed and refused to take steps to comply with the
 12 applicable access statutes; and despite knowledge of the resulting problems and denial of civil
 13 rights thereby suffered by plaintiffs and other similarly situated persons with disabilities,
 14 including the specific notices referred to in paragraph 41 of this complaint. Defendants, and
 15 each of them, have failed and refused to take action to grant full and equal access to persons with
 16 physical disabilities in the respects complained of hereinabove. Defendants, and each of them,
 17 have carried out a course of conduct of refusing to respond to, or correct complaints about,
 18 denial of handicap access and have refused to comply with their legal obligations to make the
 19 POLK STREET ECONO LODGE accessible pursuant to the Americans with Disabilities Act of
 20 1990, Americans with Disabilities Act Accessibility Guidelines (ADAAG) and Title 24. Such
 21 actions and continuing course of conduct by defendants, and each of them, evidence despicable
 22 conduct in conscious disregard for the rights or safety of plaintiffs and of other similarly situated
 23 persons, justifying an award of exemplary and punitive damages pursuant to §3294, Civil Code.

24 43. Defendants', and each of their, actions have also been oppressive to persons with
 25 physical disabilities and of other members of the public, and have evidenced actual or implied
 26 malicious intent toward those members of the public, such as plaintiffs and other persons with
 27 physical disabilities who have been denied the proper access they are entitled to by law. Further,
 28 defendants', and each of their, refusals on a day-to-day basis to remove the barriers complained

1 of herein evidence despicable conduct in conscious disregard for the rights of plaintiffs and other
 2 members of the public with physical disabilities.

3 44. Plaintiffs pray for an award of punitive damages against defendants, and each of
 4 them, pursuant to Civil Code §3294 in an amount sufficient to make a more profound example of
 5 defendants and discourage owners and operators of other hotels, motels, restaurants and other
 6 public facilities, from willful disregard of the rights of persons with physical disabilities.
 7 Plaintiffs do not know the financial worth of defendants, or the amount of punitive damages
 8 sufficient to accomplish the public purposes of §3294 of the Civil Code and seek leave to amend
 9 this complaint when such facts are known.

10 45. Plaintiff MARSHALL LOSKOT and plaintiff DREES, on behalf of its
 11 membership and the disability community which it serves, consisting of persons with disabilities,
 12 would, could and will return to the subject public accommodation when it is made accessible to
 13 persons with disabilities.

14 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC
 15 ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH
 16 DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

17 (On behalf of Plaintiffs MARSHALL LOSKOT and DISABILITY RIGHTS
 18 ENFORCEMENT, EDUCATION SERVICES: HELPING YOU HELP OTHERS, a
 19 California public benefit corporation and Against Defendants TARUNKUMAR K.
 20 PATEL and CHAMPABEN PATEL, dba Econo Lodge, inclusive)
 21 (42 U.S.C. §12101, *et seq.*)

22 46. Plaintiffs replead and incorporate by reference, as if fully set forth again herein,
 23 the allegations contained in paragraphs 1 through 45 of this complaint.

24 47. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.
 25 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully
 26 protect:

27 some 43 million Americans with one or more physical or mental
 28 disabilities; [that] historically society has tended to isolate and
 segregate individuals with disabilities; [that] such forms of
 discrimination against individuals with disabilities continue to be a
 serious and pervasive social problem; [that] the nation's proper
 goals regarding individuals with disabilities are to assure equality
 of opportunity, full participation, independent living and economic
 self-sufficiency for such individuals; [and that] the continuing
 existence of unfair and unnecessary discrimination and prejudice
 denies people with disabilities the opportunity to compete on an

1 equal basis and to pursue those opportunities for which our free
 2 society is justifiably famous.

3 48. Congress stated as its purpose in passing the Americans with Disabilities Act of
 4 1990 (42 U.S.C. §12102):

5 It is the purpose of this act (1) to provide a clear and
 6 comprehensive national mandate for the elimination of
 7 discrimination against individuals with disabilities; (2) to provide
 8 clear, strong, consistent, enforceable standards addressing
 9 discrimination against individuals with disabilities; (3) to ensure
 10 that the Federal government plays a central role in enforcing the
 11 standards established in this act on behalf of individuals with
 12 disabilities; and (4) to invoke the sweep of Congressional
 13 authority, including the power to enforce the 14th Amendment and
 14 to regulate commerce, in order to address the major areas of
 15 discrimination faced day to day by people with disabilities.

16 49. As part of the Americans with Disabilities Act of 1990, Public Law 101-336
 17 (hereinafter the “ADA”), Congress passed “Title III - Public Accommodations and Services
 18 Operated by Private Entities” (Section 301 42 U.S.C. §12181, *et seq.*). Among the public
 19 accommodations identified for purposes of this title was:

20 (7) PUBLIC ACCOMMODATION - The following private
 21 entities are considered public accommodations for purposes of this
 22 title, if the operations of such entities affect commerce -

23 (A) an inn, hotel, motel, or other place of lodging, except
 24 for an establishment located within a building that contains not
 25 more than five rooms for rent or hire and that is actually occupied
 26 by the proprietor of such establishment as the residence of such
 27 proprietor;

28 42 U.S.C. §12181(7)(A)

29 50. Pursuant to §302, 42 U.S.C. §12182, “No individual shall be discriminated
 30 against on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
 31 privileges, advantages, or accommodations of any place of public accommodation by any person
 32 who owns, leases, or leases to, or operates a place of public accommodation.”

33 51. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
 34 42 U.S.C. §12182(b)(2)(a) are:

35 (i) the imposition or application of eligibility criteria
 36 that screen out or tend to screen out an individual with a disability
 37 or any class of individuals with disabilities from fully and equally
 38 enjoying any goods, services, facilities, privileges, advantages, or

1 accommodations, unless such criteria can be shown to be
 2 necessary for the provision of the goods, services, facilities,
 3 privileges, advantages, or accommodations being offered;

4 (ii) a failure to make reasonable modifications in
 5 policies, practices, or procedures, when such modifications are
 6 necessary to afford such goods, services, facilities, privileges,
 7 advantages or accommodations to individuals with disabilities,
 8 unless the entity can demonstrate that making such modifications
 9 would fundamentally alter the nature of such goods, services,
 10 facilities, privileges, advantages, or accommodations;

11 (iii) a failure to take such steps as may be necessary to
 12 ensure that no individual with a disability is excluded, denied
 13 services, segregated or otherwise treated differently than other
 14 individuals because of the absence of auxiliary aids and services,
 15 unless the entity can demonstrate that taking such steps would
 16 fundamentally alter the nature of the good, service, facility,
 17 privilege, advantage, or accommodation being offered or would
 18 result in an undue burden;

19 (iv) a failure to remove architectural barriers, and
 20 communication barriers that are structural in nature, in existing
 21 facilities . . . where such removal is readily achievable; and

22 (v) where an entity can demonstrate that the removal of
 23 a barrier under clause (iv) is not readily achievable, a failure to
 24 make such goods, services, facilities, privileges, advantages or
 25 accommodations available through alternative methods if such
 26 methods are readily achievable.

27 The acts of defendants set forth herein were a violation of plaintiffs' rights under the ADA,
 28 Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* -
 1 Effective January 31, 1993, the standards of the ADA were also incorporated into California
 2 Civil Code §51, making available the damage remedies incorporated into Civil Code §51 and
 3 52(a) and 54.3.

4 52. The removal of the barriers complained of by plaintiffs as hereinabove alleged
 5 was at all times after January 26, 1992 "readily achievable" as to the subject building(s) of the
 6 POLK STREET ECONO LODGE pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On
 7 information and belief, if the removal of all the barriers complained of herein together was not
 8 "readily achievable," the removal of each individual barrier complained of herein was "readily
 9 achievable." On information and belief, defendants' failure to remove said barriers was likewise
 10 due to discriminatory practices, procedures and eligibility criteria, as defined by
 11 §302(b)(2)(a)(i)-(iii); 42 U.S.C. §12182 (b)(2)(A)(i).

1 53. Per §301(9), 42 U.S.C. §12181 (9), the term “readily achievable” means “easily
 2 accomplishable and able to be carried out without much difficulty or expense.” The statute
 3 defines relative “expense” in part in relation to the total financial resources of the entities
 4 involved. Plaintiffs allege that properly repairing, modifying, or altering each of the items that
 5 plaintiffs complain of herein were and are “readily achievable” by the defendants under the
 6 standards set forth under §301(9) of the Americans with Disabilities Act. Further, if it was not
 7 “readily achievable” for defendants to remove each of such barriers, defendants have failed to
 8 make the required services available through alternative methods which were readily achievable.

9 54. On information and belief, construction work on, and modifications of, the
 10 subject building(s) of the POLK STREET ECONO LODGE occurred after the compliance date
 11 for the Americans with Disabilities Act, January 26, 1992, independently triggering access
 12 requirements under Title III of the ADA.

13 55. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
 14 *seq.*, §308, plaintiffs are entitled to the remedies and procedures set forth in §204(a) of the Civil
 15 Rights Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiffs are being subjected to discrimination on
 16 the basis of disability in violation of this title or have reasonable grounds for believing that
 17 plaintiffs are about to be subjected to discrimination in violation of §302. Plaintiffs cannot
 18 return to or make use of the public facilities complained of herein so long as the premises and
 19 defendants’ policies bar full and equal use by persons with physical disabilities.

20 56. Per §308(a)(1) (42 U.S.C. 12188), “Nothing in this section shall require a person
 21 with a disability to engage in a futile gesture if such person has actual notice that a person or
 22 organization covered by this title does not intend to comply with its provisions.” Pursuant to this
 23 last section, plaintiff MARSHALL LOSKOT has not returned to defendants’ premises since on
 24 or about March 12, 2002, but on information and belief, alleges that defendants have continued
 25 to violate the law and deny the rights of plaintiffs and of other persons with physical disabilities
 26 to access this public accommodation. Pursuant to §308(a)(2), “In cases of violations of
 27 §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such

1 facilities readily accessible to and usable by individuals with disabilities to the extent required by
 2 this title.”

3 57. Plaintiffs seek relief pursuant to remedies set forth in §204(a) of the Civil Rights
 4 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement
 5 the Americans with Disabilities Act of 1990, including but not limited to an order granting
 6 injunctive relief and attorneys’ fees. Plaintiffs will seek attorneys’ fees conditioned upon being
 7 deemed to be the prevailing party.

8 58. Plaintiffs seek damages pursuant to California Civil Code §§51, 51.5 and 52(a),
 9 54, 54.1 and 54.3, which provide, within the statutory scheme, that a violation of the ADA is a
 10 violation of California’s Unruh Civil Rights Act.

11 Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

12 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS
 13 IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.**
 14 (On Behalf of Plaintiffs MARSHALL LOSKOT and DISABILITY RIGHTS,
 15 ENFORCEMENT, EDUCATION SERVICES: HELPING YOU HELP OTHERS, a
 California public benefit corporation, and Against Defendants TARUNKUMAR K.
 PATEL and CHAMPABEN PATEL, dba Econo Lodge, inclusive)
 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

16 59. Plaintiffs replead and incorporate by reference as if fully set forth again herein,
 17 the allegations contained in paragraphs 1 through 58 of this complaint.

18 60. At all times relevant to this action, California Civil Code §54 has provided that
 19 persons with physical disabilities are not to be discriminated against because of physical
 20 handicap or disability. This section provides that:

21 (a) Individuals with disabilities . . . have the same rights as
 22 the general public to full and free use of the streets, highways,
 23 sidewalks, walkways, public buildings, medical facilities,
 including hospitals, clinics, and physicians’ offices, and other
 public places.

24 61. California Civil Code §54.1 provides that persons with disabilities shall not be
 25 denied full and equal access to places of public accommodation or facilities:

26 (a)(1) Individuals with disabilities shall be entitled to full
 27 and equal access, as other members of the general public, to
 accommodations, advantages, facilities, medical facilities,
 including hospitals, clinics, and physicians’ offices, and privileges
 of all common carriers, airplanes, motor vehicles, railroad trains,
 motorbuses, streetcars, boats, or any other public conveyances or

1 modes of transportation (whether private, public, franchised,
 2 licensed, contracted, or otherwise provided), telephone facilities,
 3 adoption agencies, private schools, hotels, lodging places, places
 4 of public accommodation, amusement or resort, and other places to
 which the general public is invited, subject only to the conditions
 and limitations established by law, or state or federal regulation,
 and applicable alike to all persons.

5 Civil Code §54.1(a)(1)

6 62. California Civil Code §54.1 further provides that a violation of the Americans
 7 with Disabilities Act of 1990 constitutes a violation of section 54.1:

8 (d) A violation of the right of an individual under the
 9 Americans with Disabilities Act of 1990 (Public Law 101-336)
 which also constitutes a violation of this section, and nothing in this
 10 section shall be construed to limit the access of any person in
 violation of that act.

11 Civil Code §54.1(d)

12 63. Plaintiff MARSHALL LOSKOT and the membership of plaintiff DREES are
 13 persons within the meaning of Civil Code §54.1 whose rights have been infringed upon and
 14 violated by the defendants, and each of them, as prescribed by §§54 and 54.1. A separate act in
 15 violation of §§54 and 54.1 has been committed EACH DAY that defendants act or fail to act
 16 and/or knowingly and willfully fail and refuse to remove **each** architectural barrier or policy and
 17 procedure barrier presently existing at the subject public accommodation which denies full and
 18 equal access for persons with physical disabilities to said building(s), elements and facilities of
 19 the POLK STREET ECONO LODGE. Plaintiffs have been denied full and equal access on an
 20 ongoing basis since the date of plaintiff MARSHALL LOSKOT's first visit. As a legal result,
 21 plaintiffs are entitled to seek damages pursuant to California Civil Code §54.3(a), which
 22 provides:

23 Any person or persons, firm or corporation, who denies or
 24 interferes with admittance to or enjoyment of the public facilities
 25 as specified in Sections 54 and 54.1 or otherwise interferes with
 the rights of an individual with a disability under Sections 54, 54.1
 26 and 54.2 is liable for each offense for the actual damages and any
 amount as may be determined by a jury, or the court sitting without
 a jury, up to a maximum of three times the amount of actual
 27 damages but in no case less than . . . one thousand dollars (\$1,000)
 and . . . attorney's fees as may be determined by the court in
 addition thereto, suffered by any person denied any of the rights
 28 provided in Sections 54, 54.1 and 54.2.

1 Civil Code §54.3(a)

2 64. The public facilities above described constitute “public facilities and public
3 accommodations” within the meaning of Health & Safety Code §19955f and were facilities to
4 which members of the public are invited. The aforementioned acts and omissions of defendants,
5 and each of them, constitute a denial of equal access to use and enjoyment of these facilities by
6 persons with disabilities including plaintiffs. Said acts and omissions are also in violation of
7 provisions of Title 24 of the California Building Standards Code.

8 65. On or about March 12, 2002, plaintiff MARSHALL LOSKOT suffered violations
9 of §§54 and 54.1 of the Civil Code in that plaintiff MARSHALL LOSKOT was denied access to
10 parking, registration, guest rooms and other public facilities as stated herein at the POLK
11 STREET ECONO LODGE and on the basis that plaintiff MARSHALL LOSKOT was a person
12 with physical disabilities.

13 66. As a result of the denial of equal access to defendants’ facilities due to the acts
14 and omissions of defendants, and each of them, in owning, operating and maintaining these
15 subject public facilities, plaintiffs suffered violations of plaintiffs’ civil rights, including but not
16 limited to rights under §§54, 54.1 and 54.3, Civil Code, and plaintiff MARSHALL LOSKOT
17 suffered physical discomfort, bodily injury (including, but not limited to, fatigue, stress, strain
18 and pain in wheeling and attempting to gain entry to the guest room and from the forced digital
19 evacuation and catheterization), emotional distress, mental distress, mental suffering, mental
20 anguish, which includes shame, humiliation, embarrassment, frustration, anger, chagrin,
21 disappointment and worry, all of which are expectedly and naturally associated with a denial of
22 access to a person with physical disabilities, all to plaintiff’s damages as hereinafter stated.
23 Defendants’ actions and omissions to act constituted discrimination against plaintiff on the sole
24 basis that plaintiffs are persons or an entity that represents persons with physical disabilities and
25 unable, because of the architectural barriers created and maintained by the defendants in
26 violation of the subject laws, to use the public facilities hereinabove described on a full and
27 equal basis as other persons.

1 67. Plaintiffs have been damaged by defendants', and each of their, wrongful conduct
 2 and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 and 55 for violation of
 3 plaintiffs' rights as persons or an entity that represents persons with physical disabilities on or
 4 about March 12, 2002, and on a continuing basis since then, including statutory damages, a
 5 trebling of all of actual damages, general and special damages available pursuant to §54.3 of the
 6 Civil Code according to proof.

7 68. As a result of defendants', and each of their, acts and omissions in this regard,
 8 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
 9 plaintiffs' rights and enforce the provisions of the law protecting access for persons with
 10 physical disabilities and prohibiting discrimination against persons with physical disabilities.
 11 Pursuant to the provisions of §54.3 of the Civil Code, plaintiffs therefore will seek recovery in
 12 this lawsuit for all reasonable attorneys' fees and costs incurred if deemed the prevailing party.
 13 Additionally, plaintiffs' lawsuit is intended not only to obtain compensation for damages to
 14 plaintiffs, but also to compel the defendants to make their facilities accessible to all members of
 15 the public with disabilities, justifying public interest attorneys' fees, if deemed the prevailing
 16 party, pursuant to the provisions of §1021.5 of the Code of Civil Procedure.

17 Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

18 **III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY**
FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, ET. SEQ.
 19 (On Behalf of Plaintiffs MARSHALL LOSKOT and DISABILITY RIGHTS,
 20 ENFORCEMENT, EDUCATION SERVICES: HELPING YOU HELP OTHERS, a
 21 California public benefit corporation and Against Defendants TARUNKUMAR K.
 22 PATEL and CHAMPABEN PATEL, dba Econo Lodge, inclusive)
 23 (Health & Safety Code §19955, *et seq.*)

24 69. Plaintiffs replead and incorporate by reference, as if fully set forth again herein,
 25 the allegations contained in paragraphs 1 through 68 of this complaint.

26 70. Health & Safety Code §19955 provides in pertinent part:

27 The purpose of this part is to insure that public accommodations or
 28 facilities constructed in this state with private funds adhere to the
 29 provisions of Chapter 7 (commencing with Sec. 4450) of Division
 30 5 of Title 1 of the Government Code. For the purposes of this part
 31 "public accommodation or facilities" means a building, structure,
 32 facility, complex, or improved area which is used by the general
 33 public and shall include auditoriums, hospitals, theaters,

1 restaurants, hotels, motels, stadiums, and convention centers.
 2 When sanitary facilities are made available for the public, clients
 3 or employees in such accommodations or facilities, they shall be
 4 made available for the handicapped.

5 71. Health & Safety Code §19956, which appears in the same chapter as §19955,
 6 provides in pertinent part, “accommodations constructed in this state shall conform to the
 7 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the
 8 Government Code” Health & Safety Code §19956 was operative July 1, 1970, and is
 9 applicable to all public accommodations constructed or altered after that date. On information
 10 and belief, portions of the POLK STREET ECONO LODGE and/or of the building(s) were
 11 constructed and/or altered after July 1, 1970, and substantial portions of the subject motel and/or
 12 the building(s) had alterations, structural repairs, and/or additions made to such public
 13 accommodations after July 1, 1970, thereby requiring said motel and/or building to be subject to
 14 the requirements of Part 5.5, §19955, *et seq.*, of the Health & Safety Code upon such alteration,
 15 structural repairs or additions per Health & Safety Code §19959.

16 72. Pursuant to the authority delegated by Government Code §4450, *et seq.*, the State
 17 Architect promulgated regulations for the enforcement of these provisions. Effective July 1,
 18 1982, Title 24 of the California Building Standards Code adopted the California State Architect’s
 19 Regulations and these regulations must be complied with as to any alterations and/or
 20 modifications of the POLK STREET ECONO LODGE and/or the building(s) occurring after that
 21 date. Construction changes occurring prior to this date but after July 1, 1970 triggered access
 22 requirements pursuant to the “ASA” requirements, the American Standards Association
 23 Specifications, A117.1-1961. On information and belief, at the time of the construction and
 24 modification of said building, all buildings and facilities covered were required to conform to
 25 each of the standards and specifications described in the American Standards Association
 26 Specifications and/or those contained in Title 24 of the California Building Standards Code.

27 73. Public hotels such as the POLK STREET ECONO LODGE are “public
 28 accommodations or facilities” within the meaning of Health & Safety Code §19955, *et seq.*

74. As a legal result of denial of access to plaintiffs as hereinabove described,
 29 plaintiff MARSHALL LOSKOT suffered bodily and emotional injuries expectedly, normally

1 and naturally associated with a denial of access to parking, registration counter guest rooms and
2 other public areas as stated herein.

3 75. As a result of the actions and failure to act of defendants, and as a result of the
4 failure to provide proper and legally handicapped-accessible public facilities, plaintiffs were
5 denied plaintiffs' rights to full and equal access to public facilities, suffered a loss of plaintiffs'
6 civil rights and plaintiffs' rights as persons with physical disabilities to full and equal access to
7 public facilities, and plaintiff MARSHALL LOSKOT further suffered bodily injury (including,
8 but not limited to, fatigue, stress, strain and pain in wheeling and attempting to gain entry to the
9 guest room and from the forced digital evacuation and catheterization), emotional distress,
10 mental distress, mental suffering, mental anguish, which includes shame, humiliation,
11 embarrassment, anger, chagrin, disappointment and worry expectedly and naturally associated
12 with a person with physical disabilities being denied access, all to plaintiffs' damages as prayed
13 hereinafter in an amount within the jurisdiction of this court.

14 76. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,
15 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
16 plaintiffs' civil rights and enforce provisions of the law protecting access for the persons with
17 physical disabilities and prohibiting discrimination against the persons with physical disabilities,
18 and to take such action both in plaintiffs' own interests and in order to enforce an important right
19 affecting the public interest. Plaintiffs, therefore, seek in this lawsuit the recovery of all
20 reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure
21 §1021.5. Plaintiffs additionally seek attorneys' fees pursuant to Health & Safety Code §19953
22 and Civil Code §§54.3 and 55 and/or in the alternative, plaintiffs will seek attorneys' fees, costs
23 and litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-
24 3(a)). Plaintiffs will seek attorneys' fees conditioned upon being deemed to be the prevailing
25 party.

26 77. Plaintiffs seek injunctive relief for an order compelling defendants, and each of
27 them, to make the subject place of public accommodation readily accessible to and usable by
28 persons with disabilities.

1 78. Plaintiffs seek damages pursuant to California Civil Code §§52(a) and 54.3.

2 Wherefore, plaintiffs pray for damages and relief as hereinafter stated.

3 **IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND**
EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES
AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET
SEQ. (THE UNRUH CIVIL RIGHTS ACT)
(On Behalf of Plaintiffs MARSHALL LOSKOT and DISABILITY RIGHTS,
ENFORCEMENT, EDUCATION SERVICES: HELPING YOU HELP OTHERS, a
California public benefit corporation, and Against Defendants TARUNKUMAR K.
PATEL and CHAMPABEN PATEL, dba Econo Lodge, inclusive)
(Civil Code §51, 51.5)

8 79. Plaintiffs replead and incorporate by reference, as if fully set forth again herein,
9 the allegations contained in paragraphs 1 through 78 of this complaint.

10 80. Defendants' actions and omissions and failure to act as a reasonable and prudent
11 public accommodation in identifying, removing and/or creating architectural barriers, policies,
12 practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The
13 Unruh Act provides:

14 This section shall be known, and may be cited, as the
15 Unruh Civil Rights Act.

16 All persons within the jurisdiction of this state are free and
17 equal, and no matter what their sex, race, color, religion, ancestry,
18 national origin, or **disability** are entitled to the full and equal
19 accommodations, advantages, facilities, privileges, or services in
20 all business establishments of every kind whatsoever.

21 This section shall not be construed to confer any right or
22 privilege on a person that is conditioned or limited by law or that is
23 applicable alike to persons of every sex, color, race, religion,
24 ancestry, national origin, or **disability**.

25 Nothing in this section shall be construed to require any
26 construction, alteration, repair, structural or otherwise, or
27 modification of any sort whatsoever, beyond that construction,
28 alteration, repair, or modification that is otherwise required by
 other provisions of law, to any new or existing establishment,
 facility, building, improvement, or any other structure . . . nor shall
 anything in this section be construed to augment, restrict, or alter
 in any way the authority of the State Architect to require
 construction, alteration, repair, or modifications that the State
 Architect otherwise possesses pursuant to other . . . laws.

29 A violation of the right of any individual under the
30 Americans with Disabilities Act of 1990 (Public Law 101-336)
31 shall also constitute a violation of this section.

1 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the
 2 “intent” of the defendants in not complying with barrier removal is not an issue. Hence, the
 3 failure on the parts of defendants, as reasonable and prudent public accommodations, in acting or
 4 failing to act to identify and remove barriers can be construed as a “negligent per se” act of
 5 defendants, and each of them.

6 81. The acts and omissions of defendants stated herein are discriminatory in nature
 7 and in violation of Civil Code §51.5:

8 No business establishment of any kind whatsoever shall
 9 discriminate against, boycott or blacklist, refuse to buy from, sell
 10 to, or trade with any person in this state because of the race, creed,
 11 religion, color, national origin, sex, or **disability** of the person or
 of the person’s partners, members, stockholders, directors, officers,
 managers, superintendents, agents, employees, business associates,
 suppliers, or customers.

12 As used in this section, “person” includes any person, firm
 13 association, organization, partnership, business trust, corporation,
 limited liability company, or company.

14 Nothing in this section shall be construed to require any
 15 construction, alteration, repair, structural or otherwise, or
 16 modification of any sort whatsoever, beyond that construction,
 alteration, repair or modification that is otherwise required by
 17 other provisions of law, to any new or existing establishment,
 facility, building, improvement, or any other structure . . . nor shall
 18 anything in this section be construed to augment, restrict or alter in
 any way the authority of the State Architect to require
 19 construction, alteration, repair, or modifications that the State
 Architect otherwise possesses pursuant to other laws.

20 82. Defendants’ acts and omissions as specified have denied to plaintiffs full and
 21 equal accommodations, advantages, facilities, privileges and services in a business
 22 establishment, on the basis of physical disability, in violation of Civil Code §§51 and 51.5, the
 23 Unruh Civil Rights Act. Further, pursuant to the 1992 amendment to California Civil Code §51,
 24 “A violation of the right of any individual under the Americans with Disabilities Act of 1990
 25 (Public Law 101-336) shall also constitute a violation of this section.” Plaintiffs accordingly
 26 incorporate the entirety of their above cause of action for violation of the Americans with
 27 Disabilities Act at ¶¶46, *et seq.*, as if replied herein.

1 83. As a legal result of the violation of plaintiff MARSHALL LOSKOT's civil rights
 2 as hereinabove described, plaintiff MARSHALL LOSKOT has suffered general damages, bodily
 3 injury (including, but not limited to, fatigue, stress, strain and pain in wheeling and attempting to
 4 gain entry to the guest room and from the forced digital evacuation and catheterization), physical
 5 injury, emotional distress (all to plaintiff's damage according to proof, and incurred reasonable
 6 attorneys' fees and costs). Plaintiffs MARSHALL LOSKOT and DREES are entitled to the
 7 rights and remedies of §52(a) of the Civil Code, including trebling of actual damages (defined by
 8 §52(h) of the Civil Code to mean "special and general damages"), as well as to reasonable
 9 attorneys' fees and costs, as is allowed by statute, according to proof if deemed to be the
 10 prevailing party.

11 Wherefore, plaintiffs pray that this court grant relief and damages as hereinafter stated.

12 **V. FIFTH CAUSE OF ACTION FOR UNFAIR BUSINESS PRACTICES IN
 13 VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE §17200,
 14 *ET SEQ.***

15 (On Behalf of Plaintiffs MARSHALL LOSKOT and DISABILITY RIGHTS,
 16 ENFORCEMENT, EDUCATION SERVICES: HELPING YOU HELP OTHERS, a
 17 California public benefit corporation, and Against Defendants TARUNKUMAR K.
 18 PATEL and CHAMPABEN PATEL, dba Econo Lodge, inclusive)
 19 (Business & Professions Code §17200, *et seq.*)

20 84. Plaintiffs replead and incorporate by reference, as if fully set forth again herein,
 21 the allegations contained in paragraphs 1 through 83 of this complaint.

22 85. Defendants, and each of them, have had actual and constructive notice of the
 23 Americans with Disabilities Act of 1990 and have seen places of public accommodation similar
 24 to the public accommodations subject to this action made accessible to persons with disabilities,
 25 *i.e.*, public accommodations with accessible parking and parking signage, accessible registration
 26 counters, accessible guestrooms and bathrooms within and the requisite number of accessible
 27 guest rooms by classification.

28 86. Defendants TARUNKUMAR K. PATEL and CHAMPABEN PATEL, dba Econo
 29 Lodge, and each of them, and their agents, ostensible agents, masters, servants, employers,
 30 employees, representatives, franchisors, franchisees, joint venturers, alter egos, partners and/or
 31 associates, although having actual and constructive knowledge of the Americans with

1 Disabilities Act of 1990 and accessible elements of public accommodations, have engaged in an
 2 unlawful and unfair business act or practice of the California Business and Professions Code

3 17200. As used in this chapter, unfair competition shall mean and
 4 include any unlawful, unfair or fraudulent business act or practice
 5 and unfair, deceptive, untrue or misleading advertising and any act
 6 prohibited by Chapter 1 (commencing with Section 17500) of Part
 7 3 of Division 7 of the Business and Professions Code

8 (Calif. Bus. & Prof. Code §17200)

9 in that defendants, and each of them, have intentionally and/or negligently failed to identify and
 10 remove architectural barriers at the subject POLK STREET ECONO LODGE, thereby denying
 11 plaintiffs and those similarly situated from the opportunity to enjoy the goods and services
 12 provided therein.

13 87. Plaintiffs MARSHALL LOSKOT and DREES have the right to act as private
 14 attorneys general to remedy such acts, as provided in sections 17204 and 17205 of the California
 15 Business and Professions Code, to wit:

16 17204. Actions for any relief pursuant to this chapter shall be
 17 prosecuted exclusively in a court of competent jurisdiction by the
 18 Attorney General or any district attorney or by any county counsel
 19 authorized by agreement with the district attorney in actions
 20 involving violation of a county ordinance, or any city attorney of a
 21 city, or city and county, having a population in excess of 750,000,
 22 and, with the consent of the district attorney, by a city prosecutor
 23 in any city having a full-time city prosecutor or, with the consent
 24 of the district attorney, by a city attorney in any city and county in
 25 the name of the people of the State of California upon their own
 26 complaint or upon the complaint of any board, officer, person,
 27 corporation or association or by any person acting for the interests
 28 of itself, its members or the general public.

17205. Unless otherwise expressly provided, the remedies or
 17 penalties provided by this chapter are cumulative to each other and
 18 to the remedies or penalties available under all other laws of this
 19 state.

20 (Calif. Bus. & Prof. Code §§17204 and 17205)

21
 22 Wherefore, plaintiffs pray that this court grant relief and damages as follows:

23
 24 **PRAYER:**

25 Plaintiffs pray that this court award damages and provide relief as follows:

I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, *et seq.*)

(On Behalf of Plaintiffs MARSHALL LOSKOT and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION SERVICES:HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants TARUNKUMAR K. PATEL and CHAMPABEN PATEL, dba Econo Lodge, inclusive) (42 U.S.C. §12101, *et seq.*)

1. For injunctive relief, compelling defendants TARUNKUMAR K. PATEL and
IPABEN PATEL, dba Econo Lodge, inclusive, to make the POLK STREET ECONO
E, located at 825 Polk Street, San Francisco, California, readily accessible to and usable
viduals with disabilities, per Public Law 10 1-336, §308; and to make reasonable
cations in policies, practice, eligibility criteria and procedures so as to afford full access to
ods, services, facilities, privileges, advantages and accommodations being offered.

2. For attorneys' fees, litigation expenses and costs of suit, if plaintiffs are deemed the prevailing party; and

3. For such other and further relief as the court may deem proper.

II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, *ET SEQ.*

(On Behalf of Plaintiffs MARSHALL LOSKOT and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION SERVICES:HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants TARUNKUMAR K. PATEL and CHAMPABEN PATEL, dba Econo Lodge, inclusive), (California Civil Code §§54, 54.1, 54.3, *et seq.*)

1. For injunctive relief, compelling defendants TARUNKUMAR K. PATEL and CHAMPABEN PATEL, dba Econo Lodge, inclusive, to make the POLK STREET ECONO LODGE, located at 825 Polk Street, San Francisco, California, readily accessible to and usable by individuals with disabilities, per state law.

2. General and compensatory damages according to proof;

3. All damages as afforded by Civil Code §54.3 for each day, from the inception of the filing of this complaint, on which defendants have failed to remove barriers which denied plaintiffs and other persons with disabilities full and equal access.

1 4. Attorneys' fees pursuant to Civil Code §54.3 and §55 and Code of Civil
 2 Procedure §1021.5, if plaintiffs are deemed the prevailing party;

3 5. Punitive damages pursuant to Civil Code §3294;

4 6. For all costs of suit;

5 7. Prejudgment interest pursuant to Civil Code §3291;

6 8. Such other and further relief as the court may deem just and proper.

7 **III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE
 8 SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE
 9 §19955, ET. SEQ.**

10 (On Behalf of Plaintiffs MARSHALL LOSKOT and DISABILITY RIGHTS,
 11 ENFORCEMENT, EDUCATION SERVICES:HELPING YOU HELP OTHERS, a
 12 California public benefit corporation, and Against Defendants TARUNKUMAR K.
 13 PATEL and CHAMPABEN PATEL, dba Econo Lodge, inclusive)
 14 (Health & Safety code §19955, *et seq.*)

15 1. For injunctive relief, compelling defendants TARUNKUMAR K. PATEL and
 16 CHAMPABEN PATEL, dba Econo Lodge, inclusive, to make the POLK STREET ECONO
 17 LODGE, located at 825 Polk Street, San Francisco, California, readily accessible to and usable
 18 by individuals with disabilities, per state law.

19 2. General and compensatory damages according to proof under Civil Code §§52(a)
 20 and 54.3;

21 3. Special and consequential damages according to proof under Civil Code §§52(a)
 22 and 54.3;

23 4. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, Civil Code §55,
 24 and/or, alternatively, Health & Safety Code §19953, if plaintiffs are deemed the prevailing party;

25 5. For all costs of suit;

26 6. For prejudgment interest pursuant to Civil Code §3291;

27 7. Such other and further relief as the court may deem just and proper.

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1 **IV. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO
2 FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,
3 PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL
4 CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

5 (On Behalf of Plaintiffs MARSHALL LOSKOT and DISABILITY RIGHTS,
6 ENFORCEMENT, EDUCATION SERVICES:HELPING YOU HELP OTHERS, a
7 California public benefit corporation and Against Defendants TARUNKUMAR K.
8 PATEL and CHAMPABEN PATEL, dba Econo Lodge, inclusive)
9 (California Civil Code §§51, 51.5, *et seq.*)

10 1. General and compensatory damages according to proof;

11 2. All damages as afforded by Civil Code §52(a) for each day on which defendants
12 have denied to plaintiffs full and equal accommodations, advantages, facilities, privileges or
13 services in any business establishment or have otherwise denied to plaintiffs and persons with
14 physical disabilities equal access;

15 3. Attorneys' fees pursuant to Civil Code §52(a), if plaintiffs are deemed the
16 prevailing party;

17 4. Punitive damages pursuant to Civil Code §3294;

18 5. For all costs of suit;

19 6. Prejudgment interest pursuant to Civil Code §3291; and

20 7. Such other and further relief as the court may deem just and proper.

21 **V. PRAYER FOR FIFTH CAUSE OF ACTION FOR UNFAIR BUSINESS
22 PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS AND
23 PROFESSIONS CODE §17200, ET SEQ.**

24 (On Behalf of Plaintiffs MARSHALL LOSKOT and DISABILITY RIGHTS,
25 ENFORCEMENT, EDUCATION SERVICES: HELPING YOU HELP OTHERS, a
26 California public benefit corporation, and Against Defendants TARUNKUMAR K.
27 PATEL and CHAMPABEN PATEL, dba Econo Lodge, inclusive)
28 (Business & Professions Code §17200, *et seq.*)

29 1. For injunctive relief, compelling defendants TARUNKUMAR K. PATEL and
30 CHAMPABEN PATEL, dba Econo Lodge, inclusive, to make the POLK STREET ECONO
31 LODGE, located at 825 Polk Street, California, readily accessible to and usable by individuals
32 with disabilities, per state law.

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1 2. Attorneys' fees pursuant to applicable code if plaintiffs are deemed the prevailing
2 party.

3 Dated: September 15, 2002

THOMAS E. FRANKOVICH
A PROFESSIONAL LAW CORPORATION

5 By: /s/
6 THOMAS E. FRANKOVICH
7 Attorneys for Plaintiffs MARSHALL LOSKOT and
8 DISABILITY RIGHTS, ENFORCEMENT, EDUCATION
9 SERVICES:HELPING YOU HELP
10 OTHERS, a California public benefit corporation

DEMAND FOR JURY TRIAL

11 Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

12 Dated: September 15, 2002

THOMAS E. FRANKOVICH
A PROFESSIONAL LAW CORPORATION

14 By: /s/
15 THOMAS E. FRANKOVICH
16 Attorneys for Plaintiffs MARSHALL LOSKOT and
17 DISABILITY RIGHTS, ENFORCEMENT, EDUCATION
18 SERVICES:HELPING YOU HELP
19 OTHERS, a California public benefit corporation